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20 UNITED STATES DISTRICT COURT  
21 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
22 SAN FRANCISCO DIVISION

23 AMERICAN FEDERATION OF  
24 GOVERNMENT EMPLOYEES, AFL-CIO;  
25 AMERICAN FEDERATION OF STATE  
26 COUNTY AND MUNICIPAL EMPLOYEES,  
27 AFL-CIO; et al.,

28 Plaintiffs,

v.

UNITED STATES OFFICE OF PERSONNEL  
MANAGEMENT, et al.,

Defendants.

Case No. 3:25-cv-01780-WHA

**DECLARATION OF ASHLEY NINDL**

1 I, Ashley Nindl, declare the following under penalties of perjury:

2 1. I am over 18 years of age and competent to give this declaration. This declaration is  
3 based on my personal knowledge, information, and belief.

4 2. I served as a Business Cost Analyst at the Department of Energy ("DOE") April 21,  
5 2024 until February 13, 2025, when I was terminated. I was a probationary employee, and my  
6 probationary period was to end on April 20, 2025.

7 3. Throughout my service for the federal government, I received positive performance  
8 reviews and positive feedback from my supervisors, including a Certificate of Appreciation issued by  
9 the DOE in January 2025. A true and correct copy of my most recent performance review, dated  
10 October 30, 2024, is attached as Exhibit A.

11 4. On February 13, 2025, I received a memorandum from Cathleen Tripodi, the Director  
12 of the Office of Clean Energy Determinations. The memorandum stated that DOE had recently received  
13 guidance from OPM regarding probationary employees, and further stated: "**Per OPM instructions,**  
14 DOE finds that your further employment would not be in the public interest. For this reason, you are  
15 being removed from your position with DOE and the federal civil service effective today." A true and  
16 correct copy of the memorandum I received is attached as Exhibit B.

17 5. I am informed and believe that all other probationary members on my team received the  
18 exact same termination memorandum.

19  
20 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
21 and correct. Executed this 7 day of March in Huntingtown, MD.

22 

23 \_\_\_\_\_  
24 Ashley Nindl  
25  
26  
27  
28

# Exhibit A

DEPARTMENT OF ENERGY SUPERVISORY/NON-SUPERVISORY PERFORMANCE PLAN AND APPRAISAL FORM		
SECTION 1 - EMPLOYEE DATA		
1a. Name (Last, First MI) Nindl, Ashley A	1b. Position Title/ Pay Plan/Series/Grade Business Cost Analyst/GS/1101/12	
1c. Organization Office of Clean Energy Demonstrations-CONTRACTS AND AWARDS DIVISION	1d. Duty Station Dumfries, VA	
1e. Appraisal Period Dates  Beginning: 04/21/2024 Ending: 09/30/2024	1f. Appraisal Type <input checked="" type="checkbox"/> Annual Rating of Record <input type="checkbox"/> Special Rating Of Record (e.g. WGI or RIF) <input type="checkbox"/> Advisory Rating (Detail/Temporary Promotion)	
SECTION 2 - PERFORMANCE PLAN CERTIFICATION		
Signatures certify that the critical elements in this plan were discussed with the employee.		
2a. Typed Name Boyea, Keith Deputy Director of Contracts and Awards	2b. Reviewing Official's Signature Electronically signed by: Keith Boyea	2c. Date 05/09/2024
2d. Typed Name Whitehurst, Eddie Supervisory Grants Management Specialist	2e. Rating Official's Signature Electronically signed by: Eddie Whitehurst	2f. Date 05/09/2024
2g. Typed Name Nindl, Ashley	2h. Employee's Signature Electronically signed by: Ashley Nindl	2i. Date 05/09/2024
2j. <input type="checkbox"/> Employee declined to sign form. Reason: <input type="checkbox"/> Employee not available to sign form.		
SECTION 3 - PROGRESS REVIEW #1		
Signatures certify that the employee's progress toward meeting the job performance outcomes/expectations was discussed with the employee.		
3a. Typed Name	3b. Reviewing Official's Signature	3c. Date
3d. Typed Name Whitehurst, Eddie Supervisory Grants Management Specialist	3e. Rating Official's Signature Electronically signed by: Eddie Whitehurst	3f. Date 07/22/2024
3g. Typed Name Nindl, Ashley	3h. Employee's Signature Electronically signed by: Ashley Nindl	3i. Date 07/22/2024
3j. <input type="checkbox"/> Employee declined to sign form. Reason: <input type="checkbox"/> Employee not available to sign form.		
SECTION 3 - PROGRESS REVIEW #2 (if applicable)		
3k. Typed Name	3l. Reviewing Official's Signature	3m. Date
3n. Typed Name	3o. Rating Official's Signature	3p. Date
3q. Typed Name	3r. Employee's Signature	3s. Date
3t. <input type="checkbox"/> Employee declined to sign form. Reason: <input type="checkbox"/> Employee not available to sign form.		

Nindl, Ashley A

SECTION 4 - CRITICAL ELEMENTS											
<p><b>Each employee's performance plan must have at least 3, but no more than 6 critical elements. Each critical element can be single, double, or triple weighted for a maximum of 6 weighted critical elements. Critical elements are written at the "Meets Expectations" level.</b></p>											
<p align="center"><b>Critical Element 1</b></p> <p align="center"><b>Weight:</b> <input checked="" type="checkbox"/> <b>Single (X1)</b>   <input type="checkbox"/> <b>Double (X2)</b>   <input type="checkbox"/> <b>Triple (X3)</b></p>											
<b>Description:</b> Performance standards used as a Business Cost Analyst											
<b>Goal Linkage:</b> DOE Goal 3 - Management and Performance											
<p><b>Job Performance Outcomes/Expectations:</b></p> <p>The incumbent is expected to: Assist the Team Lead in promoting an environment where co-workers are aware of organizational goals, engaged, and supported in the accomplishment of their work. Lead by example by maintaining high standards of professional conduct and integrity consistent with DOE expectations and laws, regulations, and policies. Support workforce diversity and inclusion and comply with anti-harassment policies and programs. The performance standards are:</p> <ul style="list-style-type: none"> <li>· Systematically monitors quality, delivery, timeliness, and customer satisfaction levels and adjusts or reprioritizes to ensure fulfillment of organizational objectives.</li> <li>· Regularly collaborates with Team Lead and staff to proactively identify project or customer concerns and to devise and implement solutions to meet deadlines.</li> <li>· Ensures quality and timely deliverables are provided to meet customer expectations within established deadlines.</li> <li>· Solicits and considers stakeholder feedback in collaboration with the Team Lead to improve organizational performance on a regular basis.</li> <li>· Fosters trust and respect and communicates expectations effectively.</li> <li>· Establishes and maintains structured and regular communication with staff using a variety of modes.</li> </ul> <p>Ensures organizational alignment with DOE's diversity, equity, inclusion, and accessibility strategic goals and principles, and communicates these with staff regularly.</p>											
<b>Critical Element Performance Rating:</b>					EE	X	ME		FME		NR

**Rating Official's Comments:**

As the Cost Analysis Team Member, Ashley supported the Director and the Cost Analysis team lead. She provided timely and appropriate input which affected the final decisions of OCED and the decisions impacting the team. She cultivated an environment focused on customer service and proactively collaborated with OCED and DOE staff. her work-planning and adaptability resulted in early or timely completion of all work.

Over the last year, Ashley fostered trust and respect within OCED and communicated expectations effectively to leadership and her team members. She provided high levels of efficiency, effectiveness, and timeliness to draft, review, and issue documents, procedures, templates, and guidance.

Ashley managed her work assignments during a high demand period round of reviews and analysis of selectee organizations, ensures quality and timely deliverables are provided to meet customer expectations within established deadlines on both the reviews and the budget reviews, ensuring timely and meaningful recommendations. She completed over 10 budget reviews and 20+ Hydrogen Hub sub-recipient budgets in FY24 and performed a large number of Pre-Application Reviews, Pre-Award Organizational Review.

Ashley addressed the requirement to perform more market research on costs by incorporating a new step to her budget review process, which now includes reaching out to the FPM to ask for their analysis of the necessity of the labor mixes and goods/services included in the proposal. She established an email template, which facilitates this initial outreach.

Ashley regularly collaborates with her team lead and team to proactively identify project or customer concerns and to devise and implement solutions to meet deadlines by assisting with creating public website documents to assist our applicants. She identifies upcoming needs and steps in without waiting to be directed to do so but coordinating appropriately with her team lead.

Nindl, Ashley A

Critical Element 2											
Weight: <input type="checkbox"/> Single (X1) <input checked="" type="checkbox"/> Double (X2) <input type="checkbox"/> Triple (X3)											
<b>Description:</b>											
Expert level advice, promulgation, and interpretation of Cost Analysis and Oversight of financial assistance.											
<b>Goal Linkage:</b> DOE Goal 3 - Management and Performance											
<b>Job Performance Outcomes/Expectations:</b>											
<p>The employee shall provide advice, promulgation, and interpretation of cost analysis and oversight of financial assistance matters. This includes financial and award administration risk reviews &amp; risk tier determination, financial viability and cost share capability, accounting system reviews, organizational policies and procedures reviews, proposed budget / cost estimating reviews, cost analysis, budget / cost analysis, oversight reviews and organizational systems reviews. The employee assists in developing, updating, and maintaining policy documents, procedures, and templates. Provides business advise to the Team Lead and the Director of the Office of Award Policy, Cost Analysis and Oversight.</p> <ul style="list-style-type: none"> <li>· Assists the Team Lead in ensuring that cost analysis and oversight policies and procedures are consistent with the intent of the law, align with DOE policy, and are administratively sound and efficient.</li> <li>· Understands and appropriately applies principles, procedures, requirements, regulations, and policies related to area(s) of responsibility.</li> <li>· Provides timely and reliable advice and guidance that reflects a thorough understanding of established regulations, policies, and procedures.</li> <li>· Work products demonstrate effective application of professional or technical knowledge, skills, and technologies.</li> <li>· Demonstrate analytical and critical thinking by identifying issues and concerns based on available information; making logical conclusions; anticipating obstacles; and considering different approaches for the analysis.</li> <li>· Analyzes and resolves financial assistance issues in a timely manner, elevating sensitive issues to supervisor when appropriate.</li> <li>· Remains current with policies, trends, and best practices in professional field.</li> </ul>											
<b>Critical Element Performance Rating:</b>				X	EE		ME		FME		NR

**Rating Official's Comments:**

Ashley has a good understanding of the principles, procedures, requirements, regulations, and policies related to her role in the cost analysis team and she supports the team lead by assisting other team members. She supported the team lead in ensuring that cost analysis and oversight policies and procedures are consistent with the intent of the law, align with DOE policy, and are administratively sound and efficient. These included a Budget Narrative, Risk Assessment, Pre-Award Organization Review Statement of Work, and the Fixed Price Award Pre-Award Organization Review.

She provides support to updates to guidance documents on OCED's website. She assisted the policy team with reviewing the Budget Narrative and Budget template as a tester which reduced many mistakes and issues with these documents.

She conducted pre-reviews which demonstrated analytical and critical thinking by identifying issues and concerns based on available information; making logical conclusions; anticipating obstacles; and considering different approaches for the analysis.

Ashley has stayed current in her understanding and knowledge of policies, trends, and has always brought innovative ideas forward during team meetings. She has a good knowledge, and interpretation of regulation/guidance, and work products. She understands and appropriately applies principles, procedures, requirements, regulations, and policies related to area(s) of responsibility and her coordinated and communicated with other divisions to delineate duties and responsibilities, educate OCED division staff.



Nindl, Ashley A

Critical Element 3											
Weight: <input checked="" type="checkbox"/> Single (X1) <input type="checkbox"/> Double (X2) <input type="checkbox"/> Triple (X3)											
<b>Description:</b>											
Provides high-quality services to internal and external clients.											
<b>Goal Linkage:</b> DOE Goal 3 - Management and Performance											
<b>Job Performance Outcomes/Expectations:</b>											
<p>The employee solves internal and external client problems through analysis and interpretation of cost analysis and oversight of financial assistance, regulation, and law. Advises the Team Lead and the Director of the Office of Award Policy, Cost Analysis and Oversight (when needed) on a full range of strategic, operational, and tactic issues surrounding cost analysis and oversight. Ensures values and guiding principles of the Contracts &amp; Awards division and the Office of Award Policy, Cost Analysis and Oversight are visible and clear through example setting and leadership.</p> <ul style="list-style-type: none"> <li>· Responds to customer communications in a timely manner.</li> <li>· Identifies customers' needs and concerns.</li> <li>· Designs or adapts products and services to meet customer needs.</li> <li>· Works cooperatively with customers and colleagues to resolve disagreements in expectations and deliverables.</li> <li>· Keeps customers informed on progress of deliverables.</li> <li>· Meets agreed upon schedules and commitments or provides reason(s) for not doing so.</li> <li>· Adjusts to changing needs and is flexible to customers' requirements, providing that there are no limitations beyond the employee's control and customers' requests are not unreasonable.</li> <li>· Customer surveys and/or feedback reflect that the employee responds appropriately and in a timely manner so that customers are at least reasonably satisfied.</li> </ul>											
<b>Critical Element Performance Rating:</b>					EE	X	ME		FME		NR

**Rating Official's Comments:**

Ashley successfully met agreed upon schedules and commitments by assisting her team during the reviews, providing meaningful results within the established deadlines. She identifies customers' needs and concerns, which resulted in her identifying selectee organizations who would benefit from additional guidance and initiated and oversaw the creation of multiple website documents (de minimis, cost principles crosswalk, etc.), which created customer products to address their need for information.

Ashley assisted with training sessions with our contractor Cohen Reznick to ensure they were well-prepared to contribute to the IBR process effectively, helping the team manage the high volume of reviews and align with OCED's goals. She also attended several meetings and conducted user testing of OCED's Salesforce system. She provided feedback to the data management team and flagged several issues that came up which assisted with a better tool.

She continues to foster collaboration with other offices through the implementation of recurring team meetings. Keeping them informed on progress of deliverables. She and the team recognized the need for improved communications between the teams, to update their tracking device to allow Grants staff to have easy access to the appropriate Cost Analysis POC. This cooperation with customers and colleagues to resolve issues and provide solutions is critical to OCED.

She routinely responds to internal stakeholders and external customers (selectee organizations) in a timely manner to provide updates or assistance as needed and keeps them informed on progress of deliverables. She adapts products and services to meet staff and selectee needs. As a result of these actions, her created trust, respect, and open communication created a positive work environment and facilitated the prompt resolution of concerns. This collaborative and communicative approach enhanced the team's ability to meet project goals and customer needs efficiently.

Nindl, Ashley A

Section 5 - Progress Review #1 (certify discussion on page 1, Section 3)	
Critical Element	Rating Official's Comments
1. Performance standards used as a Business Cost Analyst	Ashley has performed at an outstanding level.
2. Expert level advice, promulgation, and interpretation of Cost Analysis and Oversight of financial assistance.	Ashley has performed at an outstanding level.
3. Provides high-quality services to internal and external clients.	Ashley has performed at an outstanding level.
4.	
5.	
6.	

Nindl, Ashley A

SECTION 6a - CRITICAL ELEMENT AGGREGATE TOTALS		
This is the total number of weighted critical elements that have been rated at each level.		
<input type="text" value="2"/> EE	<input type="text" value="2"/> ME	<input type="text"/> FME <input type="text"/> NR
SECTION 6b - SUMMARY RATING DETERMINATION CHART		
Total Weighted Critical Elements	Summary Rating	
All rated EE	Significantly Exceeds Expectations (SE)	
Majority rated EE	Exceeds Expectations (EE)	
Majority rated ME, equally divided between EE and ME, or all rated ME	Meets Expectations (ME)	
Any rated FME	Fails to Meet Expectations (FME)	
SECTION 6c - SUMMARY RATING (from Summary Rating Determination Chart above)		
Signatures certify that the employee's summary rating has been discussed. The employee's signature does not necessarily indicate agreement with the rating.		
<input type="text"/> SE <input type="text"/> EE <input checked="" type="text"/> ME <input type="text"/> FME		
6d. Typed Name Boyea, Keith Deputy Director of Contracts and Awards	6e. Reviewing Official's Signature Electronically signed by: Keith Boyea	6f. Date 10/29/2024
6g. Typed Name Whitehurst, Eddie Supervisory Grants Management Specialist	6h. Rating Official's Signature Electronically signed by: Eddie Whitehurst	6i. Date 10/30/2024
6j. Typed Name Nindl, Ashley	6k. Employee's Signature Electronically signed by: Ashley Nindl	6l. Date 10/31/2024
6m. <input type="checkbox"/> Employee declined to sign form. <input type="checkbox"/> Employee not available to sign form. Reason:		

Privacy Act Statement
This performance appraisal form is subject to the provisions of the Privacy Act of 1974 (P.L. 93-579; Statute 1896. Copies will be retained and provided for review by appropriate management officials. The form is used to document the evaluation of the incumbent's performance in completing the assigned critical elements, to determine performance award eligibility and compensation benefits, and for taking action to improve the employee's performance or other appropriate action when performance is unacceptable. The authority to collect this information is derived from 5 USC 4305 and 5 CFR Part 430, Management. The information will not be disclosed outside the Department without prior consent, except as required or permitted by law or Office of Personnel Management System of Record Notice OPM/Govt-2, Employee Performance File System Records. Ratings of record are stored in the employee's electronic Official Personnel File (eOPF).

Nindl, Ashley A

6n. Rating and/or Reviewing Official's Comments: *(Optional)*

6o. Employee Comments: *(Optional)*

## Exhibit B



## Department of Energy

Washington, DC 20585

February 13, 2025

### MEMORANDUM:

TO: Ashley A. Nindl  
Business Cost Analyst

FROM: Cathleen Tripodi  
Director, Office of Clean Energy Demonstrations

SUBJECT: Notification of Termination During  
Probationary/Trial Period

REFERENCES: 5 U.S.C. § 7511  
5 U.S.C. § 3321(a)  
5 C.F.R. § 316.304, if applicable

This is to provide you with notice that the Department of Energy (DOE) is removing you from your position of Business Cost Analyst and federal service consistent with the above references.

Your appointment to this position was subject to the satisfactory completion of an initial probationary/trial period ending on April 20, 2025.

Guidance from the Office of Personnel Management (OPM) states, "An appointment is not final until the probationary period is over," and the probationary period is part of "the hiring process for employees."<sup>1</sup> "A probationer is still an applicant for a finalized appointment to a particular position as well as to the Federal service."<sup>2</sup> "Until the probationary period has been completed," a probationer has "the burden to demonstrate why it is in the public interest for the Government to finalize an appointment to the civil service for this particular individual."<sup>3</sup>

Per OPM instructions, DOE finds that your further employment would not be in the public interest. For this reason, you are being removed from your position with DOE and the federal civil service effective today.

Terminations during probationary/trial period are not covered under applicable grievance procedures. Your status as an employee serving a probationary period provides you with limited appeal rights to the Merit Systems Protection Board (MSPB).

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<sup>1</sup> OPM, [Practical Tips for Supervisors of Probationers](#).

<sup>2</sup> See U.S. Merit Systems Protection Board Report to the President and Congress, [The Probationary Period: A Critical Assessment Opportunity](#) (August 2005)

<sup>3</sup> *Id.*



According to 5 CFR § 315.806, you may appeal this termination to MSPB only if you feel this action was based on discrimination of partisan political activity or marital status. An appeal must be filed within 30 calendar days of the effective date of this action. The MSPB regulations are available on its website, [www.mspb.gov](http://www.mspb.gov). Appeals may be filed by mail, by facsimile, by commercial overnight delivery, by personal delivery, or by the Board's electronic filing procedure, e-Appeal Online (<https://e-appeal.mspb.gov>). We have also included a copy of the MSPB Form 185 for your convenience. If you decide to file an appeal with MSPB, you should notify the MSPB that the Agency point of contact for your MSPB appeal is:

Jenny Knopinski  
Deputy Assistant General Counsel for  
Personnel Law and Administrative Litigation  
Office of the General Counsel, GC-21  
U.S. Department of Energy  
240-678-7837  
[jenny.knopinski@hq.doe.gov](mailto:jenny.knopinski@hq.doe.gov)

You have the right to contact an Equal Employment Opportunity counselor and to file a complaint through the discrimination complaint process within 45 days of your receipt of this letter if you believe this action is being taken because of your race, color, religion, sex, national origin, disability, age, genetics, or in retaliation for your previous participation in the EEO process. You can initiate or amend a complaint by email [civilrights@hq.doe.gov](mailto:civilrights@hq.doe.gov), or by phone at (202) 586-2218. Information regarding the EEOC complaint process can be found at [www.eeoc.gov](http://www.eeoc.gov).

If you believe this action was taken because of a prohibited personnel practice, you have the right to seek corrective action with the Office of Special Counsel (OSC). Information regarding the OSC complaint process can be found at [www.osc.gov](http://www.osc.gov).

Please note your filing with any of these entities, including MSPB, may impact your right to file with the other entities.

You may contact the Employee Benefits Division at: [OHROCBenefits@hc.doe.gov](mailto:OHROCBenefits@hc.doe.gov) for benefits guidance.

DOE's Employee Assistance Program (EAP) and its services are available to you and your immediate family at no cost and are confidential. Should you or a family member need individual counseling you may contact, at your discretion, the Federal Occupational Health (FOH) at 1-800-222-0364 (888-262-7848, hearing-impaired) for support.

We appreciate your service to DOE and wish you success in your future endeavors. If you have any questions, please contact [OPLER@hq.doe.gov](mailto:OPLER@hq.doe.gov).